

## **INDEX OF EXHIBITS**

**Exhibit 1:** Photographs of Plaintiff's Vehicle and Pro-life Signs

# EXHIBIT 1



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

PAUL DOBROWOLSKI,

Plaintiff,

v.

CITY OF ANN ARBOR, and JOHN SETO, in his  
official capacity as Chief of Police, City of Ann  
Arbor,

Defendants.

Case No.

**COMPLAINT**

[Civil Rights Action under 42  
U.S.C. § 1983]

**AMERICAN FREEDOM LAW CENTER**

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P.O. Box 131098

Ann Arbor, Michigan 48113

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David Yerushalmi, Esq. (Ariz. Bar No. 009616;

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(646) 262-0500

*Counsel for Plaintiff*

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Plaintiff Paul Dobrowolski ("Plaintiff"), by and through his undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States

Constitution and 42 U.S.C. § 1983, challenging the City of Ann Arbor's City Code § 10:60, facially and as applied to Plaintiff's speech.

2. Plaintiff seeks a declaration that Ann Arbor City Code § 10:60 violates his clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Ann Arbor City Code § 10:60 as set forth in this Complaint; and a judgment awarding nominal damages. Plaintiff also seeks an award of his reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claim for damages is authorized under 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

### **PLAINTIFF**

6. Plaintiff is an adult resident of the State of Michigan and a pro-life advocate.

### **DEFENDANTS**

7. Defendant City of Ann Arbor (hereinafter "Ann Arbor" or "City") is a Michigan municipal corporation.

8. Defendant John Seto is the Chief of Police for Ann Arbor. At all relevant times, Defendant Seto was an agent, servant, and/or employee of Ann Arbor, acting under color of state law. As Chief of Police, Defendant Seto is responsible for enforcing—as well as supervising and directing the law enforcement officers who enforce—the codes, laws, ordinances, and regulations of Ann Arbor, including Ann Arbor City Code § 10:60. Defendant Seto is sued in his official capacity only.

### STATEMENT OF FACTS

9. Section 10:60 of the Ann Arbor City Code states as follows:

**10:60 - Prohibitions for certain purposes.**

No person shall park a vehicle upon any street or highway for the principal purpose of:

- (1) Displaying such vehicle for sale;
- (2) Washing, polishing, greasing, or repairing such vehicle, except repairs necessitated by an emergency;
- (3) Displaying advertising;
- (4) Selling merchandise from such vehicle except in a duly established market place, or when so authorized or licensed under Title 7 of this Code.

10. Ann Arbor City Code § 10:60 does not define “advertising,” it does not define “[d]isplaying advertising,” and it does not define “principal purpose.”

11. Plaintiff is a pro-life advocate who engages in peaceful, non-obstructive anti-abortion speech activity on the public sidewalks and public streets outside of a Planned Parenthood abortion facility located on Professional Drive in Ann Arbor, Michigan.

12. As part of his free speech activity, Plaintiff distributes pro-life literature and holds pro-life signs while he is on the public sidewalks, and he displays pro-life signs in the windows

of his vehicle, which he lawfully parks on the public street outside of the Planned Parenthood facility. Plaintiff's vehicle, a Toyota Camry, is fully operational and lawfully registered and licensed.

13. The pro-life signs displayed in the windows of Plaintiff's vehicle include the following: "Ask to See the Ultrasound," "Abortion Hurts Women," and "Free Ultrasound, Family Life Services, 2950 Packard, YPSI, 734-434-3088" (hereinafter "Free Ultrasound Sign"). Plaintiff also displays similar signs in Spanish. True and accurate photographs of Plaintiff's vehicle and sign displays are attached to this Complaint as Exhibit 1.

14. Plaintiff is a chemist at Cayman Chemical, which is located in Ann Arbor, Michigan. Plaintiff has no affiliation—professional or otherwise—with Family Life Services. Plaintiff displays the Free Ultrasound Sign as part of his overall pro-life message.

15. Plaintiff has lawfully parked his vehicle outside of the Planned Parenthood facility on Professional Drive for more than a year.

16. On May 22, 2012, and again on May 25, 2012, Plaintiff received a notice (it was affixed to his vehicle) pursuant to "Ann Arbor MI Ordinance No. 10:136 Abandoned vehicles," informing Plaintiff that he had 48 hours to move his vehicle or it would be considered abandoned and thus impounded. Plaintiff complied on each occasion and promptly moved his vehicle.

17. On May 29, 2012, Plaintiff received a ticket pursuant to Ann Arbor City Code § 10:60 because of the pro-life signs displayed in his vehicle. Plaintiff's signs allegedly violated the "Displaying advertising" provision of the City code. Plaintiff paid the \$25 fine to avoid further escalation of the fine amount.

18. On May 31, 2012, Plaintiff received another notice pursuant to “Ann Arbor MI Ordinance No. 10:136 Abandoned vehicles.” Plaintiff again complied and promptly moved his vehicle.

19. On June 4, 2012, Plaintiff received another ticket for allegedly violating Ann Arbor City Code § 10:60 because of the pro-life signs displayed in his vehicle. Plaintiff’s pro-life signs allegedly violated the “Displaying advertising” provision of the City code. Plaintiff contested this ticket.

20. During the “formal hearing” on the alleged violation of Ann Arbor City Code § 10:60, the Ann Arbor police officer who issued the ticket testified that she was “directed” to do so by her supervisor.

21. The police officer who issued the ticket also testified during the formal hearing as follows:

Q: So then any time anybody displays anything in their window, it’s a violation of code, would that be correct, officer?

A: Probably, yes.

22. Consequently, the police officer enforcing Ann Arbor City Code § 10:60 considers any sign displayed in the window of a vehicle to be a violation of this code provision.

23. At the conclusion of the hearing, the court found that Plaintiff had violated the City code provision that prohibited “Displaying advertising” by displaying his Free Ultrasound Sign in the window of his vehicle. The court stated that the other pro-life signs did not violate the City code because they were “political speech” and not “advertising,” thereby distinguishing the signs based on their content.

24. The court also noted that Plaintiff “could have stored the signs in any other fashion [in the vehicle]; [he] could have laid them down; [or he] could have put them in the trunk” without violating the City code. Consequently, the signs could be in the parked vehicle; they just could not be in the vehicle in a manner that would allow others to see them.

25. The court concluded, “But you don’t put them up in the window the way these things are with the desire for anything other than that somebody else is going to see them and that that person is going to be influenced by what they see.”

26. Plaintiff was ordered to pay a \$25 fine, which he did.

27. Plaintiff wants to continue to display the Free Ultrasound Sign in his vehicle while it is parked on the public street outside of the Planned Parenthood facility on Professional Drive in Ann Arbor, Michigan, because he believes that this sign helps to prevent abortions, which is the primary purpose for his pro-life speech activity. However, because Plaintiff fears receiving another ticket and having to pay another fine for violating Ann Arbor City Code § 10:60, he has ceased displaying his Free Ultrasound Sign.

28. All of Plaintiff’s pro-life signs, including his Free Ultrasound Sign, constitute political speech and are thus accorded the greatest protection under the First Amendment.

29. None of Plaintiff’s signs, including his Free Ultrasound Sign, expresses a message related solely to the economic interests of Plaintiff and his audience. That is, Plaintiff’s signs are not commercial speech as a matter of law.

30. Ann Arbor City Code § 10:60, facially and as applied to Plaintiff’s signs, is a content-based restriction on speech in a traditional public forum.

31. Ann Arbor does not have a legitimate interest—compelling, substantial, or otherwise—that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign’s message.

32. A speech restriction is content-neutral if it is justified without reference to the content of the regulated speech. Ann Arbor City Code § 10:60 on its face and as applied refers to the content of the speech, making distinctions between speech that is “advertising,” which is prohibited, and speech that is not “advertising,” which is allowed.

33. Ann Arbor City Code § 10:60 does not provide any content-neutral, objective criteria that would guide an officer in the enforcement of this City code.

34. Ann Arbor City Code § 10:60 reaches beyond purely commercial speech to regulate fully protected speech, including protected speech that is inextricably intertwined with commercial speech.

35. The plain language of Ann Arbor City Code § 10:60 does not limit the scope of the regulated activity to purely commercial expression.

### **FIRST CLAIM FOR RELIEF**

#### **(Freedom of Speech—First Amendment)**

36. Plaintiff hereby incorporates by reference all stated paragraphs.

37. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

38. Ann Arbor City Code § 10:60, facially and as applied to Plaintiff's pro-life signs displayed in his vehicle, including his Free Ultrasound Sign, violates Plaintiff's right to freedom of speech protected by the First Amendment.

39. Plaintiff's pro-life signs, including his Free Ultrasound Sign, are political speech.

40. Plaintiff's pro-life signs are not misleading.

41. Ann Arbor does not have a legitimate interest—compelling, substantial, or otherwise—that is directly and materially advanced by the enforcement of Ann Arbor City Code § 10:60 as set forth in this Complaint.

42. There is no legitimate governmental interest that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

43. Ann Arbor City Code § 10:60 is not a reasonable, content-neutral restriction on the time, place, and manner of protected speech.

44. Ann Arbor City Code § 10:60 is not narrowly tailored to serve a significant governmental interest.

45. Ann Arbor City Code § 10:60 is not the least restrictive means of furthering a compelling governmental interest.

46. Ann Arbor City Code § 10:60 is a content-based restriction on Plaintiff's speech in a traditional public forum in violation of the First Amendment.

47. Ann Arbor City Code § 10:60 is vague and overbroad in violation of the First Amendment.

48. Ann Arbor City Code § 10:60 is overbroad because it reaches beyond purely commercial speech to regulate fully protected speech, including protected speech that is inextricably intertwined with commercial speech.

49. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

## **SECOND CLAIM FOR RELIEF**

### **(Vagueness—Fourteenth Amendment)**

50. Plaintiff hereby incorporates by reference all stated paragraphs.

51. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of the due process of law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

52. Ann Arbor City Code § 10:60 lacks any objective standards or proper safeguards, is overbroad, and is selectively enforced, thereby operating to deprive Plaintiff of his right to due process of law protected by the Fourteenth Amendment.

53. Ann Arbor City Code § 10:60 is unconstitutionally vague because it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly.

54. Ann Arbor City Code § 10:60 is unconstitutionally vague and thereby permits arbitrary and discriminatory enforcement because it does not provide explicit standards for those who apply them. Consequently, Ann Arbor City Code § 10:60 impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

55. Ann Arbor City Code § 10:60 is unconstitutionally vague in that it abuts upon sensitive areas of basic First Amendment freedoms and operates to inhibit the exercise of those freedoms, thereby leading citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

56. There is no rational basis for permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

57. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

### **THIRD CLAIM FOR RELIEF**

#### **(Equal Protection—Fourteenth Amendment)**

58. Plaintiff hereby incorporates by reference all stated paragraphs.

59. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60 under color of state law, Defendants have deprived Plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

60. By reason of the aforementioned enforcement of Ann Arbor City Code § 10:60, Defendants have prevented Plaintiff from expressing a political message in a traditional public forum based on the content of the message in violation of the Equal Protection Clause of the Fourteenth Amendment.

61. Ann Arbor City Code § 10:60 is not narrowly tailored to serve a significant governmental interest.

62. Ann Arbor City Code § 10:60 is not the least restrictive means of furthering a compelling governmental interest.

63. Defendants' disparate treatment of protected speech in a traditional public forum is not justified by any legitimate governmental interest.

64. There is no legitimate governmental interest that is advanced by permitting the display of some signs in legally parked vehicles, but prohibiting other similar sign displays based on the content of the sign's message.

65. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this court:

A) to declare that Ann Arbor City Code § 10:60, facially and as applied, violates Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) to permanently enjoin Ann Arbor City Code § 10:60 and its application to Plaintiff's speech and related activities as set forth in this Complaint;

C) to award Plaintiff nominal damages;

D) to award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

E) to grant such other and further relief as this court should find just and proper.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

/s/ David Yerushalmi

David Yerushalmi, Esq.

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Michigan

Paul Dobrowolski,

*Plaintiff,*

v.

Case No. 5:13-cv-11809-GAD-RSW  
Hon. Gershwin A. Drain

Ann Arbor, City of, et al.,

*Defendant.*

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**SUMMONS IN A CIVIL ACTION**

To: Ann Arbor, City of

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert J. Muise  
P.O. Box 131098  
Ann Arbor, MI  
48113

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Peruski  
*Signature of Clerk or Deputy Clerk*

Date of Issuance: April 23, 2013



## Summons and Complaint Return of Service

Case No. 5:13-cv-11809-GAD-RSW  
Hon. Gershwin A. Drain

A copy of the Summons and Complaint has been served in the manner indicated below:

Name of Defendant Served: Ann Arbor, City of

Date of Service: \_\_\_\_\_

### Method of Service

\_\_\_\_\_ Personally served at this address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Left copies at defendant's usual place of abode with (name of person):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Other (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Returned unexecuted (reason):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Service Fees:** Travel \$\_\_\_\_\_ Service \$\_\_\_\_\_ Total \$\_\_\_\_\_

### Declaration of Server

I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: \_\_\_\_\_

Signature of Server: \_\_\_\_\_

Date: \_\_\_\_\_

Server's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Michigan

Paul Dobrowolski,

*Plaintiff,*

v.

Case No. 5:13-cv-11809-GAD-RSW  
Hon. Gershwin A. Drain

Ann Arbor, City of, et al.,

*Defendant.*

---

**SUMMONS IN A CIVIL ACTION**

To: John Seto

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert J. Muise  
P.O. Box 131098  
Ann Arbor, MI  
48113

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Peruski  
*Signature of Clerk or Deputy Clerk*

Date of Issuance: April 23, 2013



## Summons and Complaint Return of Service

Case No. 5:13-cv-11809-GAD-RSW  
Hon. Gershwin A. Drain

A copy of the Summons and Complaint has been served in the manner indicated below:

Name of Defendant Served: John Seto

Date of Service: \_\_\_\_\_

### Method of Service

\_\_\_\_\_ Personally served at this address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Left copies at defendant's usual place of abode with (name of person):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Other (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Returned unexecuted (reason):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Service Fees:** Travel \$\_\_\_\_\_ Service \$\_\_\_\_\_ Total \$\_\_\_\_\_

### Declaration of Server

I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: \_\_\_\_\_

Signature of Server: \_\_\_\_\_

Date: \_\_\_\_\_

Server's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWOLSKI,

Plaintiff,

v

Case No5:13-cv-119-0-GAD-RSW

Hon. Gershwin A. Drain

CITY OF ANN ARBOR, and JOHN SETO,  
In his official capacity as Chief of Police,  
City of Ann Arbor,

Defendants.

---

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Robert W. West (P31009)  
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Rwest@a2gov.org

**APPEARANCE OF COUNSEL ON BEHALF OF DEFENDANTS**

The undersigned Robert W. West hereby enter his appearance as attorney for defendants in this action.

Office of the City Attorney

Dated: May 16, 2013

/s/ ROBERT W. WEST

Robert W. West (P31009)  
Senior Assistant City Attorney  
Attorneys for Defendant  
P.O. Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6170

### CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Plaintiff's Counsel, Robert J. Muise and David Yerushalmi, and I hereby certify that I have mailed by US Mail the document to the following non-ECF participants: None.

/s/ Jane Allen

Assistant

Ann Arbor City Attorney's Office

City of Ann Arbor

301 E. Huron St., P.O. Box 8647

Ann Arbor, MI 48107-8647

(734) 794-6180

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWOLSKI,

Plaintiff,

v

Case No5:13-cv-119-0-GAD-RSW  
Hon. Gershwin A. Drain

CITY OF ANN ARBOR, and JOHN SETO,  
In his official capacity as Chief of Police,  
City of Ann Arbor,

Defendants.

\_\_\_\_\_  
American Freedom Law Center  
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**APPEARANCE OF COUNSEL ON BEHALF OF DEFENDANTS**

The undersigned Stephen K. Postema hereby enter his appearance as attorney for defendants in this action.

Office of the City Attorney

Dated: May 16, 2013

/s/ STEPHEN K. POSTEMA  
Stephen K. Postema (P38871)  
Senior Assistant City Attorney  
Attorneys for Defendant  
P.O. Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6170

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Plaintiff's Counsel, Robert J. Muise and David Yerushalmi, and I hereby certify that I have mailed by US Mail the document to the following non-ECF participants: None.

/s/ Jane Allen

Assistant

Ann Arbor City Attorney's Office

City of Ann Arbor

301 E. Huron St., P.O. Box 8647

Ann Arbor, MI 48107-8647

(734) 794-6180

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

PAUL DOBROWOLSKI,

Plaintiff,

v.

CITY OF ANN ARBOR, and JOHN SETO, in  
his official capacity as Chief of Police, City of  
Ann Arbor,

Defendants.

No. 5:13-cv-11809-GAD-RSW

STIPULATED MOTION FOR  
ENTRY OF ORDER

AMERICAN FREEDOM LAW CENTER  
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(646) 262-0500  
*Counsel for Plaintiff*

OFFICE OF THE CITY ATTORNEY  
Stephen K. Postema, Esq. (P38871)  
Robert W. West, Esq. (P31009)  
301 E. Huron Street, P.O. Box 8647  
Ann Arbor, Michigan 48107-8647  
(734) 794-6170  
*Counsel for Defendants*

Plaintiff Paul Dobrowolski (“Plaintiff”), by and through his undersigned counsel; and Defendants City of Ann Arbor and John Seto (“Defendants”), by and through their undersigned counsel, (collectively referred to as the “parties”), hereby stipulate to the entry of an order enjoining the enforcement of Ann Arbor City Code § 10:60 as applied to Plaintiff’s vehicle signs as set forth in the Complaint (Doc. No. 1) during the pendency of this action before this court.

In support of this motion, the parties show unto this court the following:

1. On April 23, 2013, Plaintiff filed his Complaint against Defendants, challenging

the constitutionality of Ann Arbor City Code § 10:60, facially and as applied to his vehicle signs.

2. On May 2, 2013, Plaintiff's counsel sent to each Defendant a notice of lawsuit and request to waive service of a summons. In the correspondence to Defendants, Plaintiff's counsel requested a meet-and-confer with Defendants' counsel as soon as practical to discuss the filing of a temporary restraining order ("TRO") / preliminary injunction to enjoin the enforcement of Ann Arbor City Code § 10:60 as applied to Plaintiff's vehicle signs during the pendency of this action.

3. On May 14, 2013, a meet-and-confer was held between counsel for the parties. During this conference, Defendants' counsel indicated that they will sign the waivers of service, and the parties discussed the proposed TRO / preliminary injunction motion.

4. During the discussion of the motion, counsel for the Defendants said that they would agree to not enforce Ann Arbor City Code § 10:60 as applied to Plaintiff's vehicle signs during the pendency of this action.

5. The parties agree that this stipulation is not a concession of liability and that it may not be used by either party for purposes of showing liability or lack thereof in this matter.

WHEREFORE, pursuant to this stipulation, the parties respectfully request that the court enter the attached order enjoining the enforcement of Ann Arbor City Code § 10:60 as applied to Plaintiff's vehicle signs as set forth in the Complaint (Doc. No. 1) during the pendency of this action before this court.

AMERICAN FREEDOM LAW CENTER

By: /s/ Robert J. Muise  
Robert J. Muise, Esq.  
David Yerushalmi, Esq.  
*Counsel for Plaintiff*

OFFICE OF THE CITY ATTORNEY

By: /s/ Stephen K. Postema  
Stephen K. Postema, Esq.  
Robert W. West, Esq.  
*Counsel for Defendants*

\* \* \* \* \*

**ORDER**

Upon stipulation of the parties and for good cause shown, Defendants, their employees, agents, and successors in office, are hereby enjoined from enforcing Ann Arbor City Code § 10:60 as applied to Plaintiff's vehicle signs as set forth in the Complaint (Doc. No. 1) during the pendency of this action before this court.

**SO ORDERED.**

Dated: May 17, 2013

/s/Gershwin A Drain  
Hon. Gershwin A. Drain  
United States District Judge

**CERTIFICATE OF SERVICE**

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on May 17, 2013.

/s/T. Banskton  
Case Manager

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

PAUL DOBROWOLSKI,

Plaintiff,

v.

CITY OF ANN ARBOR, and JOHN SETO, in  
his official capacity as Chief of Police, City of  
Ann Arbor,

Defendants.

No. 5:13-cv-11809-GAD-RSW

AMERICAN FREEDOM LAW CENTER  
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AMERICAN FREEDOM LAW CENTER  
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DC Bar No. 978179; Cal. Bar No. 132011;  
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1901 Pennsylvania Avenue NW  
Suite 201  
Washington, D.C. 20006  
[david.yerushalmi@verizon.net](mailto:david.yerushalmi@verizon.net)  
(646) 262-0500  
*Counsel for Plaintiff*

OFFICE OF THE CITY ATTORNEY  
Stephen K. Postema, Esq. (P38871)  
Robert W. West, Esq. (P31009)  
301 E. Huron Street, P.O. Box 8647  
Ann Arbor, Michigan 48107-8647  
(734) 794-6170  
*Counsel for Defendants*

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**NOTICE OF APPEARANCE**

Pursuant to Local Rules, Attorney David Yerushalmi hereby enters his notice of appearance as co-counsel of record representing Plaintiff Paul Dobrowolski in the above-captioned matter. Attorney Yerushalmi is a member in good standing of the bar of this court.

Dated: May 17, 2013

Respectfully submitted,

/s/ David Yerushalmi

*Co-counsel for Plaintiff*

American Freedom Law Center

1901 Pennsylvania NW

Suite 201

Washington, D.C. 20006

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(646) 262-0500

Fax (801) 760-3901

Ariz. Bar No. 009616; DC Bar No. 978179; Cal. Bar No. 132011;

NY Bar No. 756206

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/ David Yerushalmi  
David Yerushalmi, Esq.

## UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan ☐

Paul Dobrowolski

Plaintiff

v.

City of Ann Arbor, et al.,

Defendant

Civil Action No. 5:13-cv-11809-GAD-RSW

## WAIVER OF THE SERVICE OF SUMMONS

To: Robert J. Muisse

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 05/02/2013, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 05-17-13

City of Ann Arbor

Printed name of party waiving service of summons

Robert W. West (P31009)

Signature of the attorney or unrepresented party

Robert W. West

Printed name

301 E. Huron St. Ann Arbor, MI 48107

Address

rwest@a2gov.org

E-mail address

(734) 794-6181

Telephone number

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

## UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan ☐Paul Dobrowolski*Plaintiff*

v.

City of Ann Arbor, et al.,*Defendant*

Civil Action No. 5:13-cv-11809-GAD-RSW

## WAIVER OF THE SERVICE OF SUMMONS

To: Robert J. Muise*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 05/02/2013, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 05-17-13Robert W West (P31009)*Signature of the attorney or unrepresented party*John Seto, in his official capacity as Chief of Police*Printed name of party waiving service of summons*Robert W. West*Printed name*301 E. Huron St. Ann Arbor, MI 48107*Address*rwest@a2.gov.org*E-mail address*(734) 794-6181*Telephone number*

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWOLSKI,

Plaintiff,

v

Case No 5:13-cv-11809-GAD-RSW

Hon. Gershwin A. Drain

CITY OF ANN ARBOR, and JOHN SETO,  
In his official capacity as Chief of Police,  
City of Ann Arbor,

Defendants.

\_\_\_\_\_  
American Freedom Law Center  
Robert J. Muise (P62849)  
Attorney for Plaintiff  
P.O. Box 131098  
Ann Arbor, MI 48113  
(734) 635-3756  
rmuise@americanfreedomlawcenter.org

David Yerushalmi (AZ Bar No. 009616)  
DC Bar No. 978179; CA Bar No. 132011;  
NY Bar No. 4632568  
Attorney for Plaintiff  
1901 Pennsylvania Ave., NW, Suite 201  
Washington, C.D. 20006  
(646) 262-0500  
David.yerushalmi@verizon.net  
\_\_\_\_\_

Stephen K. Postema (P38871)  
Robert W. West (P31009)  
OFFICE OF THE CITY ATTORNEY  
Attorneys for Defendants  
301 E. Huron St., P.O. Box 8647  
Ann Arbor, MI 48107-8647  
(734) 794-6170  
Rwest@a2gov.org

**ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**  
**ON BEHALF OF DEFENDANTS CITY OF ANN ARBOR and JOHN SETO**

NOW COMES DEFENDANT, KEVIN WARNER, by and through his attorney, the Office of  
the City Attorney, and for his Answer to Plaintiff's Complaint, states as follows:

### **INTRODUCTION**

1. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Plaintiff's Complaint.
2. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Plaintiff's Complaint.

### **JURISDICTION and VENUE**

3. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Plaintiff's Complaint.
4. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Plaintiff's Complaint.
5. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Plaintiff's Complaint.

### **PLAINTIFF**

6. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Plaintiff's Complaint.
7. Admitted.
8. Admitted.

### **STATEMENT OF FACTS**

9. Admitted.
10. Admitted.
11. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Plaintiff's Complaint.

12. Admitted that Plaintiff displays pro-life signs in the windows of a vehicle registered to him, while that vehicle is parked on a public street outside of the Planned Parenthood building in Ann Arbor. The remainder of the allegations set forth in paragraph 12 of the Plaintiff's Complaint are denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of those allegations.

13. Admitted that Plaintiff has displayed signs of the sort described in paragraph 13 of Plaintiff's Complaint, although at times, including on May 25, 2012, there have been other signs, albeit of a similar nature, displayed in Plaintiff's vehicle.

14. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Plaintiff's Complaint.

15. Admitted that Plaintiff has parked his vehicle on Professional Drive for an extended period of time, the exact length of time being neither admitted nor denied. It is also denied that the vehicle is lawfully parked at all times for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of those allegations.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. The allegations made in paragraph 22 are denied because they are untrue.

23. Admitted.

24. Admitted that the portion of paragraph 24 of the Plaintiff's Complaint that is contained within the quotation marks accurately quotes the trial court's ruling. The remaining allegations set forth in this paragraph are denied because they are untrue.

25. Admitted.

26. Admitted.

27. Denied for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the Plaintiff's Complaint.

28. Denied. The free ultrasound sign implicates commercial advertising.

29. Denied that the economic interests of Plaintiff and his audience define the parameters of commercial speech as a matter of law.

30. Admitted.

31. Denied. The City does have a compelling interest in regulating commercial activities on public streets under its control.

32. Admitted.

33. The allegations made in paragraph 33 are denied because they are untrue.

34. The allegations made in paragraph 34 are denied because they are untrue.

35. The allegations made in paragraph 35 are denied because they are untrue.

### **FIRST CLAIM FOR RELIEF**

#### **(Freedom of Speech – First Amendment)**

36. Defendants hereby incorporate by reference all of the answers given to the allegations made in paragraphs 1 through 35 of Plaintiff's Complaint as though fully re-stated here.

37. The allegations made in paragraph 37 are denied because they are untrue.

38. The allegations made in paragraph 38 are denied because they are untrue.
39. Denied. The free ultrasound sign implicates commercial advertising.
40. Denied. Said signs express a personal viewpoint that is subjective in nature and not capable of empirical validation.
41. Denied. The City does have a compelling interest in regulating commercial activities on public streets under its control.
42. Denied. The City does have a compelling interest in regulating commercial activities on public streets under its control.
43. The allegations made in paragraph 43 are denied because they are untrue.
44. The allegations made in paragraph 44 are denied because they are untrue.
45. Denied that the “least restrictive means” is the standard by which ordinances regulating commercial speech are to be evaluated.
46. Denied that the ordinance violated the First Amendment.
47. The allegations made in paragraph 47 are denied because they are untrue.
48. The allegations made in paragraph 48 are denied because they are untrue.
49. The allegations made in paragraph 49 are denied because they are untrue.

## **SECOND CLAIM FOR RELIEF**

### **(Vagueness – Fourteenth Amendment)**

50. Defendants hereby incorporate by reference all of the answers given to the allegations made in paragraphs 1 through 49 of Plaintiff’s Complaint as though fully re-stated here.
51. The allegations made in paragraph 51 are denied because they are untrue.
52. The allegations made in paragraph 52 are denied because they are untrue.

- 53. The allegations made in paragraph 53 are denied because they are untrue.
- 54. The allegations made in paragraph 54 are denied because they are untrue.
- 55. The allegations made in paragraph 55 are denied because they are untrue.
- 56. Denied. The City has a compelling interest in regulating commercial activities on public streets under its control.
- 57. Denied.

### **THIRD CLAIM FOR RELIEF**

#### **(Equal Protection – Fourteenth Amendment)**

- 58. Defendants hereby incorporate by reference all of the answers given to the allegations made in paragraphs 1 through 57 of Plaintiff's Complaint as though fully re-stated here.
- 59. The allegations made in paragraph 59 are denied because they are untrue.
- 60. Denied. City Code sec. 10:60 prevents only commercial advertising, not the expression of political views.
- 61. The allegations made in paragraph 61 are denied because they are untrue.
- 62. Denied that the "least restrictive means" is the standard by which ordinances regulating commercial speech are to be evaluated.
- 63. Denied that Plaintiff has been subjected to disparate treatment of protected speech.
- 64. Denied. The City has a compelling interest in regulating commercial activities on public streets under its control.
- 65. The allegations made in paragraph 65 are denied because they are untrue.

WHEREFORE, Defendants City of Ann Arbor and John Seto respectfully requests this Court to enter an order and/or judgment dismissing the Plaintiff's claims with prejudice and awarding them the costs they have incurred in defending against said claims including, but not limited to, reasonable attorneys' fees.

Office of the City Attorney

Dated: July 1, 2013

/s/ ROBERT W. WEST

Robert W. West (P31009)  
Senior Assistant City Attorney  
Attorneys for Defendants  
P.O. Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6170

**SPECIAL AND AFFIRMATIVE DEFENSES**

NOW COMES DEFENDANTS, by and through their attorneys, and hereby give notice to Plaintiff of Defendants' intention to raise and assert the following special and/or affirmative defenses, based in significant part upon information and belief, discovery not having progressed, as follows:

1. That Plaintiff's Complaint fails to state a legally cognizable cause of action upon which relief may be granted, in whole or in part.
2. That any injuries or damages sustained by Plaintiff were the result of and were proximately caused by his own actions and/or wrongdoing.
3. That at all relevant times Defendants did not violate any clearly established statutory or constitutional rights of Plaintiff and hence are entitled to qualified immunity.

4. That at all relevant times Defendants acted with objective and reasonable good faith and without malice and hence are entitled to qualified immunity.
5. That Defendants reserve the right to plead and assert such further and additional Special and/or Affirmative Defenses, counter-claims, cross-claims, or third-party claims as they may become known through the process of discovery which has not yet progressed.

Respectfully submitted:

Office of the City Attorney

Dated: July 1, 2013

/s/ROBERT W. WEST

Robert W. West (P31009)  
Assistant City Attorney  
Attorneys for Defendants  
P.O. Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6170

#### CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Plaintiff's Counsel, Robert J. Muise and David Yerushalmi, and I hereby certify that I have mailed by US Mail the document to the following non-ECF participants: None.

/s/ Alexandria Keszler

Assistant  
Ann Arbor City Attorney's Office  
City of Ann Arbor  
301 E. Huron St., P.O. Box 8647  
Ann Arbor, MI 48107-8647  
(734) 794-6180

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Paul Dobrowolski,

Plaintiff(s),

v.

Case No. 2:13-cv-11809-GAD-RSW  
Hon. Gershwin A. Drain

Ann Arbor, City of, et al.,

Defendant(s),  
\_\_\_\_\_

**NOTICE TO APPEAR**

You are hereby notified to appear before District Judge Gershwin A. Drain at the United States District Court, Theodore Levin U.S. Courthouse, 231 W. Lafayette Boulevard, Room 110, Detroit, Michigan, for the following proceeding(s):

- SCHEDULING CONFERENCE: August 5, 2013 at 11:30 AM

**Certificate of Service**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

By: s/T Bankston  
Case Manager

Dated: July 2, 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

PAUL DOBROWOLSKI,

Plaintiff,

v.

CITY OF ANN ARBOR, and  
JOHN SETO, in his official capacity as  
Chief of Police, City of Ann Arbor,

Defendants.

No. 5:13-cv-11809-GAD-RSW

RULE 26(f) REPORT OF THE  
PARTIES

AMERICAN FREEDOM LAW CENTER  
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Ann Arbor, Michigan 48113  
[rmuise@americanfreedomlawcenter.org](mailto:rmuise@americanfreedomlawcenter.org)  
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David Yerushalmi, Esq.  
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Suite 201  
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(646) 262-0500  
*Counsel for Plaintiff*

OFFICE OF THE CITY ATTORNEY  
Stephen K. Postema, Esq. (P38871)  
Robert W. West, Esq. (P31009)  
301 E. Huron Street, P.O. Box 8647  
Ann Arbor, Michigan 48107-8647  
(734) 794-6170  
*Counsel for Defendants*

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties met via telephone conference to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1) of the Federal Rules of Civil Procedure, and to develop this joint report.

1. The meeting was attended by:
  - a. Robert J. Muise, counsel for Plaintiff;
  - b. Robert W. West, counsel for Defendants.
2. The parties agree to exchange pre-discovery disclosures required by Rule 26(a)(1) by **August 19, 2013**.
3. The parties do not consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
4. Service has been executed on all parties.
5. Recommended discovery plan:
  - a. Subjects on which discovery is to be sought and the nature, extent, and scope of discovery that the parties need to (1) make a settlement evaluation, (2) prepare for case dispositive motions, (3) prepare for trial: facts and circumstances related to the application and enforcement of Ann Arbor City Code § 10:60 as set forth in the Complaint.
  - b. The parties do not anticipate the need for any changes in the limitations to discovery that are imposed under the Federal Rules of Civil Procedure or the local rules of this court.
  - c. The parties do not anticipate issues relating to the disclosure or discovery of electronically stored information.

- d. The parties do not anticipate issues relating to claims of privilege or of protection as to trial-preparation materials.
- e. The parties do not anticipate the need for expert testimony, but reserve the right to present such testimony, including rebuttal expert testimony.
- f. The parties' recommended date to reveal the identity of expert witnesses, if any, together with a copy of the expert's report: **September 16 2013**. The parties' recommended date to reveal the identity of any rebuttal expert witnesses, together with a copy of the expert's report: **October 11, 2013**.
- g. The parties will exchange witness lists by **September 23, 2013**.
- h. The parties anticipate completing all discovery by **November 5, 2013**.
- 6. Recommended cut-off date to amend the pleadings to add any additional parties or claims: **September 13, 2013**.
- 7. Recommended dispositive motion date: **November 26, 2013**.
- 8. Recommended date for a status conference (if any): None at this time.
- 9. Suggestions as to type and timing of efforts at Alternative Dispute Resolution: None at this time.
- 10. Recommended date for a final pretrial conference: **February 24, 2014**.
- 11. Suggested trial date: **March 10, 2014**.

12. The parties are currently negotiating a settlement. In fact, Plaintiff has submitted a settlement proposal to Defendants. However, due to primary elections, the Ann Arbor City Council was unable to consider the proposal during July, as counsel had originally anticipated. Consequently, it is anticipated that the matter will be considered by the City Council during its meeting scheduled for August 8, 2013.

AMERICAN FREEDOM LAW CENTER    OFFICE OF THE CITY ATTORNEY

By: /s/ Robert J. Muise  
Robert J. Muise, Esq.  
David Yerushalmi, Esq.  
*Counsel for Plaintiff*

By: /s/ Stephen K. Postema  
Stephen K. Postema, Esq.  
Robert W. West, Esq.  
*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 23, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWSKI,

Plaintiff,

Case No. 13-cv-11809  
Honorable Gershwin A. Drain

v.

CITY OF ANN ARBOR, et al.,

Defendants.

\_\_\_\_\_ /

**SCHEDULING ORDER**

YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES	
Initial Disclosures Due:	August 26, 2013
Amendment of pleadings to add claims or parties:	September 13, 2013
Expert Reports Due:	September 16, 2013
Witness Lists Due:	September 23, 2013
Rebuttal Expert Reports Due:	October 13, 2013
Discovery Cutoff:	November 5, 2013
Dispositive Motion Cutoff:	November 26, 2013
Case Evaluation: <sup>1</sup>	November of 2013
Settlement Conference before Magistrate Judge R. Steven Whalen:	January of 2014
Motions <i>in Limine</i> due:	January 28, 2014
Final Pretrial Order due:	February 18, 2014
Final Pretrial Conference:	February 25, 2014 at 10:00 a.m.

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<sup>1</sup> The parties may submit the case to facilitation in lieu of case evaluation. A proposed stipulated order referring case to facilitation shall be submitted to the Court via the utilities function on CM/ECF no later than August 30, 2013. The proposed order must identify the facilitator and the date set for facilitation. Facilitation must occur no later than November 29, 2013.

Trial Date:	March 11, 2014 at 9:00 a.m.
Bench Trial	
Estimated Length of Trial: 2 days	

- I. **TIME.** Computation of time under this order and under any notice of any scheduling order or notice in this case shall be in conformity and accordance with Federal Rule of Civil Procedure 6(a).
- II. **DISCOVERY.** Discovery shall be completed on or before the date set forth in the scheduling order. The court will not order discovery to take place subsequent to the discovery cutoff date. The discovery deadline may be extended by filing a stipulation with the court only if the extension of time does not affect the dispositive motion cut-off, final pretrial conference or trial dates. Extensions or adjournments of all other dates will only be considered upon the filing of a timely written motion for good cause shown. Local Rule 26.2 generally prohibits filing discovery materials with the Clerk. Violation of this rule may result in sanctions.
- III. **FINAL PRETRIAL CONFERENCE AND FINAL PRETRIAL ORDER.** The Final Pretrial Order must be submitted through the document utilities function of the CM/ECF on or before the date set by this order. All witnesses must be listed in the Final Pretrial Order. Witnesses may only be added to the Final Pretrial Order by stipulation of the parties and leave of court. Counsel shall follow the procedure outlined below to prepare for the final pretrial conference and the Final Pretrial Order:
- A. Counsel for all parties are directed to confer in person (face to face) at their earliest convenience in order to (1) reach any possible stipulations narrowing the issues of law and fact, (2) deal with non-stipulated issues in the manner stated in this paragraph, and (3) exchange documents that will be offered in evidence at trial. It shall be the duty of counsel for plaintiff to initiate that meeting and the duty of opposing counsel to respond to plaintiff's counsel and to offer full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of opposing counsel, it shall be his or her duty to communicate with the court. The Final Pretrial Order shall fulfill the parties' disclosure obligations under Federal Rule of Civil Procedure 26(a)(3), unless the Judge orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. Counsel for plaintiff shall prepare a draft Final Pretrial Order and submit it to opposing counsel, after which all counsel will jointly submit the proposed order. The Final Pretrial Order should provide for the signature of the court, which, when signed, will become an Order of the court. The proposed Final Pretrial Order shall strictly comply with the requirements of Local Rule 16.2.

\* Pursuant to Local Rule 16.2(b)(9), any objection based on foundation or

**authenticity will be deemed waived if not raised before trial.**

- B. The following persons shall personally attend the final pretrial conference:
- 1) Trial counsel for each party;
  - 2) All parties who are natural persons;
  - 3) A representative on behalf of any other party;
  - 4) A representative of any insurance carrier that has undertaken the prosecution or defense of the case and has contractually reserved to itself the ability to settle the action.

Representatives must possess full authority to engage in settlement discussions and to agree upon a full and final settlement. "Personal attendance" by each party is not satisfied by (1) trial counsel professing to have full authority on behalf of the client or (2) a party being available by telephone.

- IV. At least ONE WEEK prior to the beginning of trial, counsel shall furnish to the court the following:

- A. In jury cases, any requests for VOIR DIRE, proposed JOINT JURY INSTRUCTIONS and the VERDICT FORM. The parties shall file with the court a single set of proposed, stipulated jury instructions and a single, proposed verdict form. The instructions are to be typewritten and double spaced and shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"). Additionally, each party shall separately file any additional proposed instructions to which any other party objects. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching an agreement as to an acceptable form.
- B. In a non-jury case, proposed FINDINGS OF FACT and CONCLUSIONS OF LAW.
- C. A statement of claims or defenses, no longer than two pages, suitable to be read to the jury during opening instructions.

- V. **EXHIBITS.** Counsel are required to mark all proposed exhibits in advance of trial. Plaintiff's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive number and lettering system should be used by each party. The parties are required to exchange marked exhibits three days prior to the start of trial. Counsel are also required to maintain a record of all admitted exhibits during trial. See attached exhibit form. Counsel for each party must keep custody of that party's admitted exhibits during trial. A party who objects to this provision must file a written objection prior to jury selection.

- VI. **JUDGE'S COPIES.** A paper copy of electronically filed motions, briefs, attachments, responses, replies, proposed Final Pretrial Order, and proposed Joint Jury Instructions (with disc) **MUST** be delivered directly to the Judge's chambers and labeled Judge's copy.

- VII. The court will not allow counsel not admitted in the Eastern District to practice upon a special motion. All inquiries regarding admission to this district must be directed to the Clerk's office at (313) 234-5005.
- VIII. **LOCAL COUNSEL.** An attorney admitted to practice in the Eastern District of Michigan who appears as attorney of record and is not an active member of the State Bar of Michigan must specify local counsel with an office in this district. Local counsel must enter an appearance and otherwise comply with Local Rule 83.20(f).

SO ORDERED.

Dated: August 5, 2013

/s/Gershwin A Drain

GERSHWIN A. DRAIN

United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
August 5, 2013, by electronic and/or ordinary mail.

/s/ Tanya Bankston

Deputy Clerk

HONORABLE GERSHWIN A. DRAIN  
UNITED STATES DISTRICT JUDGE  
231 W. LAFAYETTE, Room 123  
DETROIT, MI 48226

PHONE: (313) 234-5213 FAX: (313) 234-5219  
CASE MANAGER: Tanya Bankston

CONFERENCES	Scheduling conferences held after answer filed and scheduling order issued. Status conference held as needed or requested. Settlement conference before Magistrate Judge assigned to the case required.
MOTIONS	Hearings held on most motions. Proposed orders shall be attached to the motion, as well as submitted through the document utilities function of the CM/ECF. Strict compliance required with Local Rules 7.1 and 65.1.
DISCOVERY	Discovery <u>shall be completed on or before</u> the date set forth in the scheduling order.
MEDIATION	Civil cases referred after discovery cut-off and parties are encouraged to stipulate in writing to be bound by mediation sanctions. It is not necessary, however, that sanctions be included in the stipulation.
PRETRIAL	Final Pretrial Order generally due one week before final pretrial conference. Witnesses may only be added to the final pretrial order by stipulation of the parties and leave of court. Final pretrial conference usually held two weeks prior to trial, parties and/or persons with settlement authority must be present.
TRIAL	Attorneys are responsible to ascertain the status of the trial date. Marked exhibits are to be exchanged three (3) days prior to trial. <u>Benchbook of exhibits is required.</u> If trial briefs are required by the court, they must be filed one (1) week prior to trial. File motions <i>in limine</i> no later than four (4) weeks prior to the final pretrial conference. Trial is usually held 9:00 a.m. to 4:00 p.m. daily.
NON-JURY	Submit proposed findings of fact/conclusions of law, one (1) week prior to trial.
JURY	Voir dire by court. Submit proposed voir dire one (1) week prior to trial. Proposed joint jury instructions and verdict form due one (1) week prior to trial. Judge's courtesy copy and disc required.

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS
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[illegible]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWOLSKI,

Plaintiff,

Case No. 13-cv-11809  
Honorable Gershwin A. Drain

v.

CITY OF ANN ARBOR, *et al.*,

Defendants.

\_\_\_\_\_ /

**ORDER OF REFERENCE TO UNITED STATES MAGISTRATE JUDGE**

IT IS ORDERED that this matter is referred to U.S. Magistrate Judge R. Steven Whalen for the following purpose:

- Conduct Settlement Conference in January of 2014 at the United States District Court for the Eastern District of Michigan, Room 673.

Dated: August 5, 2013

/s/ Gershwin A. Drain  
\_\_\_\_\_  
GERSHWIN A. DRAIN  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served  
upon attorneys of record on  
August 5, 2013, by electronic mail.

/s/ Tanya Bankston  
Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Paul Dobrowolski,

Plaintiff(s),

v.

Case No. 2:13-cv-11809-GAD-RSW

Hon. Gershwin A. Drain

Ann Arbor, City of, et al.,

Nature of Suit: 440

Defendant(s),  
\_\_\_\_\_

**ORDER OF REFERENCE TO MEDIATION TRIBUNAL**

The Court on its own motion having selected this case for case evaluation;

IT IS HEREBY ORDERED that the above-entitled case be referred to the Wayne County Mediation Tribunal for case evaluation under Local Rule 16.3 of the United States District Court for the Eastern District of Michigan.

- Scheduled Final Pretrial Conference Date: 2/25/2014
- Scheduled Bench Trial: 3/11/2014

s/Gershwin A. Drain

Gershwin A. Drain

U.S. District Judge

**Certificate of Service**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

By: s/C Bethel  
Case Manager

Dated: August 5, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PAUL DOBROWOLSKI,

Plaintiff,

v.

Case No. 13-11809

District Judge Gershwin A. Drain

Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR, et al.,

Defendants.

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**NOTICE OF SETTLEMENT CONFERENCE**

**TAKE NOTICE** that the above-entitled matter has been scheduled for settlement proceedings on **THURSDAY, JANUARY 9, 2014 at 1:30 P.M.**, before Magistrate Judge R. Steven Whalen, at 673 Theodore Levin Courthouse, 231 W. Lafayette, Detroit, MI 48226. **All parties with settlement authority are required to be present.**

The parties shall adhere to the following procedures:

At least fourteen (14) days prior to the settlement conference, counsel for the parties shall meet and confer in a good-faith attempt to settle the case or to narrow the areas of disagreement. They shall exchange good-faith and *realistic* offers to settle, and shall explain to each other why their demand or offer is reasonable. If a demand or offer is rejected, the attorney who rejects shall explain to opposing counsel the reasons for the rejection.

Seven (7) days before the settlement conference, the parties shall submit confidential, ex-parte settlement statements directly to the chambers of the Honorable R. Steven Whalen, United States Magistrate Judge. **DO NOT FILE THESE STATEMENTS WITH THE COURT.** The statements shall be limited to ten (10) pages, and shall include the following:

- A short summary of the pre-conference meet-and-confer, including the last demand and offer made;
- A statement of why that demand or offer was rejected;
- A realistic statement of what the party requires in order to settle this case.

While the settlement statement may include a summary of the facts, claims and defenses, it is not a summary judgment motion, and counsel should be mindful that the Magistrate Judge who is facilitating settlement is not trying the case or deciding dispositive motions at this point.

At the settlement conference, the parties and their attorneys are expected to conduct themselves in a business-like manner and to negotiate in good faith. Posturing and other theatrics are prohibited.

s/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: August 6, 2013

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**CERTIFICATE OF SERVICE**

I hereby certify on August 6, 2013, I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on August 6, 2013: **None.**

s/Terri L. Hackman  
Judicial Assistant to  
Magistrate Judge R. Steven Whalen  
(313) 234-5115